



C.R.P.No.3892 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3892 of 2022

and

C.M.P.No.20387 of 2022

1.Narayanasamy Konar

2.Senthilkumar

... Petitioners

Vs.

K.Soundarapandian

... Respondent

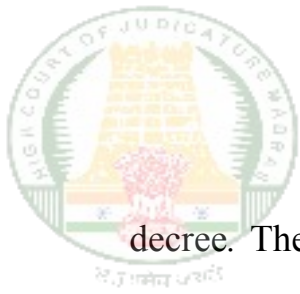
PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal order passed by the learned Principal District Judge, Nagapattinam in I.A.No.2 of 2022 in O.S.No.18 of 2015 dated 06.09.2022.

For Petitioners : M/s.S.Parthasarathy

For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioners seeking to condone the delay of 1676 days in filing the petition to set aside the *exparte*



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decree. The respondent herein filed a suit for specific performance of contract in O.S.No.18 of 2015. Owing to the failure on the part of the petitioners to file written statement they were set *exparte* and subsequently *exparte* decree was passed against the petitioners on 04.07.2017. Thereafter the petitioners filed a petition to set aside *exparte* decree with petition to condone the delay of 1676 days in filing the said petition. The Court below not satisfied with the reasons assigned by the petitioners dismissed the said petition. Aggrieved by the same the petitioners are before this Court by way of revision.

2. A perusal of the affidavit filed by the 1st petitioner in support of his petition to condone the delay of 1676 days would suggest that the 1st petitioner had entrusted the matter with the 2nd petitioner and he was conducting the case on behalf of the 1st petitioner.

3. The 1st petitioner has filed an affidavit in support of petition to condone the delay seeking to set aside the *exparte* decree. In the affidavit, the 1st petitioner had averred that the 2nd petitioner was in charge of the conducting case of the defendants in the suit and due to his failure to conduct the case in Court, *exparte*



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decree was passed against both of them. The averment made by the 1st petitioner is not sufficient to condone huge delay of 1676 days. Even according to the 1st petitioner he received summons in the suit and he entrusted the matter to his son/the 2nd petitioner herein. It is clearly found in the averment that due to the failure of the 2nd petitioner to conduct the case in proper manner an *ex parte* decree was passed against the petitioners. Therefore the negligence on the part of 2nd petitioner is admitted by the 1st petitioner. Therefore reasons assigned by the petitioners in the affidavit filed in support of the condone delay petition is not sufficient to condone the huge delay of 1676 days.

4. A perusal of the impugned order passed by the Court below would make it clear that summons were served on the petitioners. They were set *ex parte* and the matter was posted for recording *ex parte* evidence. Both petitioners filed an application in I.A.No.2 of 2022 to set aside the *ex parte* judgment and the same was allowed on 04.07.2017. Thereafter the 1st petitioner filed vakalat and entered appearance through advocate K. Panneerselvam and the 2nd petitioner entered appearance through advocate K.K.Rajakumar. Therefore, it is clear that the petitioners entered appearance through two different advocates, hence reasons



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assigned by the 1st petitioner in his affidavit is falsified. Thereafter again the petitioners failed to file written statement and consequently they were set *exparte* on 08.12.2015 and ultimately after recording *exparte* evidence, an *exparte* decree was passed on 04.07.2017.

5. Thereafter the respondent herein filed an execution petition in E.P.No.7 of 2020 for executing specific performance obtained by him. The petitioners after receiving notice in Execution Petition entered appearance through another advocate namely F.V.Jerald on 07.11.2020. They also filed vakalat in E.P.No.7 of 2020. Thereafter Execution Petition was allowed on 10.01.2022. Execution Petition was adjourned to 10.02.2022 for deposit of stamp papers of the sale deed. Only at this stage, the petitioner have filed the present application to set aside the *exparte* decree.

6. The present application was filed only on 07.03.2022 whereunder petitioners received notice in execution petition and entered appearance in E.P.No.7 of 2020 07.11.2020. They filed counter on 07.10.2021. Therefore at least after receipt of notice in execution petition on 07.11.2020, the petitioners should



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have taken steps to set aside the *ex parte decree*. However, petition filed by the petitioners only in March 2022. Therefore, there is absolutely no way to accept the reasons stated by the petitioners to condone huge delay of 1676 days to set aside *ex parte* decree. Therefore, I do not find any illegality or irregularity in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected .

29.11.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
jai



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S.SOUNTHAR, J.

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To

1. The Principal District Judge,
Nagapattinam.

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